IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

Crl.MC.No. 3781 of 2006()

CC.819/2004 of ADDL.CHIEF JUDICIAL MAGISTRATE (E & O),ERNAKULAM

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PETITIONER:

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1. MARY VARGHESE, W/O.VARGHESE,
RESIDING AT MARY VILLA, VENKETESH NAGAR,
GULBARGA.

2. ROSELINE CLEETUS,
W/O.LEO CLEETUS, RESIDING AT MIDLAND APARTMENTS,
FLAT NO.3, SECTION 9, PLOT NO.17,
VASHI, NEW BOMBAY.

3. GISELLO RONALD, W/O.RONALD,
SHANGRILLA APARTMENTS, FLAT NO.203,
BALIKA ASRAM ROAD, KANKANADY, MANGALORE.

4. SANTHOSH VARGHESE, S/O.V.VARGHESE,
MARY VILLA, VENKETESH NAGAR, GULBARGHA.

BY ADV. SRI.PRAVEEN K. JOY
SRI.B.S.SURESH KUMAR

RESPONDENTS:

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1. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. G.RAMAKRISHNAN NAIR,
34/116, GEETHANJALI, BALAKRISHNA MENON ROAD,
EDAPPALLY, KOCHI-24.

BY PUBLIC PROSECUTOR: SRI.K.A.AKBAR
SRI.SUNIL NAIR
SRI.PROMY KAPRAKAT

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT.J

Crl.M.C. No. 3781 OF 2006

Dated this the 18th day of December 2006

ORDER

Petitioners are accused Nos. 4,5,6,& 8 in a prosecution under Section 138 of the Negotiable Instruments Act. Accused No.1 is a partnership firm. Accused Nos. 2 &3 are the signatories of the cheque and accused Nos 4 to 8 are the partners of the first accused partnership firm.

2. The learned Magistrate has taken cognizance of the offence alleged against all the accused persons. The petitioners have rushed to this Court with this application under Section 482 of the Cr.P.C. It is prayed that the powers under Section 482 may be invoked and the proceedings against them may be quashed.

3. What is the reason? The learned counsel for the petitioner submits that the petitioners are not the drawers of the cheque. The drawer of the cheque is the first accused partnership firm. The second and third accused are the signatories who have signed on behalf of the firm. The petitioners are only partners and following the decision of the Supreme Court in **S.M.S Pharmaceutics Ltd Vs. Neeta Bhalla 2005 (8) SCC 89**

and a Division Bench of this Court in **Mymoonath Beevi Vs.State of Kerala 2005 (4) KLT 174 ,** it must be held that there is no sufficient, vital or necessary averments which can attract culpable liability as against the petitioner under Section 138 r/w 141 of the Negotiable Instruments Act. This in short is the contention.

4. The following averments appear in the complaint so far as accused 2 to 8 (Partners) of the first accused partnership firm are concerned. I extract the same.

> *The first accused herein is a firm. The rest of the accused are its partners. Accused 2 to 8 are the person responsible for the conduct of the business and affairs of the 1st accused.*

5. Along with the complaint an affidavit was filed by the complainant. In paragraph 2of the complaint the following passage also appears.

> *The first accused in the above complaint is a firm. The rest of the accused are its partners. Accused 2 to 8 are conducting and managing the business affairs of the first accused firm.*

6. The short question to be considered is whether sufficient

averments/ materials to support the indictment against the petitioners are there, as insisted by **S.M.S Pharmaceuticals Ltd and Mymoonath Beevi (Supra).**

7. It is true that the words of the statute have not been repeated in the complaint and in the affidavit. It is also true that no other materials other than the complaint and the affidavit filed are made available before the Court to indicate the alleged culpable liability of the petitioners. But I am certainly of opinion that the averments in the complaint which I have already extracted above are sufficient materials at this stage- at the threshold to induce the requisite satisfaction in the mind of the learned Magistrate that the petitioners herein also deserve to be proceeded against. At the threshold all that the Court is to consider is whether there is sufficient grounds to proceed. It would be myopic to expect a litigant to extract the the very same words of the Statute in the complaint/affidavit field by him. The averments have to be read and understood reasonably. I would certainly have wanted the complainant to place some materials which would support his assertion that accused Nos. 4 to 8 are actually involved in the day-to-day affairs of the firm. But the decision in **Mymoonatha Beevi** (Supra) makes

it clear that if sufficient averments are there in the complaint it is not necessary to look for other materials. In the light of that clear statement of the law by the Division Bench I am satisfied that, courts will not be justified in looking for further materials in addition to the averments in the complaint and in the affidavit extracted above to jusitify the initiation of proceedings against the petitioners.

8. The learned counsel for the petitioners submits that it will result in great prejudice, hardship and loss to the petitioners if personal appearance of the petitioners were to be insisted from them on all dates of posting. I find no reason why the personal appearance of the petitioners need be insisted at any stage of the proceedings except for reasons specifically adverted to by the learned Magistrate. It shall be open to the petitioner to make application before the learned Magistrate for exemption from personal appearance. I need only mention that the learned Magistrate must consider the same in accordance with law on merits and expeditiously.

R.BASANT,JUDGE

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